IN SENATE OF THE UNITED STATES.

May 6, 1836.
Read, and ordered to be printed.

Mr. Crittenden made the following

REPORT,

WITH SENATE BILL NO. 247.

The Committee on the Judiciary, to whom was referred the petition of Gabriel W. Denton, have had the same under consideration, and report to the Senate:

That, in the year 1817, sundry custom-house bonds, for an amount in the aggregate of more than $20,000, were executed to the United States, at Savannah, in the State of Georgia, by Joshua E. White, Steel White, and Jane Jackson, as *principals*, and by Barna McKinnie and the said G. W. Denton, as their sureties. At the date of said bonds the said principal debtors were merchants and partners, trading under the firm and style of Joshua E. White & Co.; and the said sureties constituted another mercantile firm under the name and style of Barna McKinnie, & Co.

The bonds became due in 1818, and remaining unpaid, suits were brought, and judgments recovered thereon, in August 1819, in the district of the United States, for the district of Georgia, against the principals and sureties, by default.

It appears that on these judgments writs of fieri facias were regularly made for many years, according (it is presumed) to the practice of the court, but were never put into the hands of the marshal earlier than the year 1822 or 1823.

From a period prior to the commencement of those suits, there was a correspondence, which continued for several years, between the principal obligors on said bonds, or some one of them, and the proper officers of the Government, on the subject of those debts. The object of that correspondence on the part of said principal debtors, was to solicit and negotiate for indulgence; they insist earnestly upon the ultimate security of the debts, but acknowledge their present embarrassments, and make strong appeals to the forbearance and lenity of the Government. It appears that this correspondence or part of it was long forgotten and mislaid in the offices of Government, and has only very recently been searched up and [illegible] at the instance (it is presumed) of the petitioner. It

[Gales & Seaton, print.]

is quite probable that the whole of it has not yet been recovered; but from that portion which has been obtained and submitted to the committee, it is perfectly clear that indulgence and delay of payment were from time to time granted by the Government, and new arrangements made with the principals, for the security and payment of the debts. And there is no evidence whatever that the petitioner was privy or assenting to these indulgences or arrangements or any of them. The inference deducible from the absence of all evidence of any such privity or assent, is confirmed by the fact that the petitioner, in consequence of the bankruptcy of his mercantile firm, abandoned his residence at Savannah, and removed to the State of Louisiana, in the year 1820, and, it is presumed, knew nothing of any of the subsequent proceedings of the other parties in relation to the business.

The committee are further satisfied that it was in consequence of, and in conformity to, the arrangements and indulgences made and granted as aforesaid, that all compulsory proceedings upon said judgments were delayed and suspended, from the time of their rendition, in August, 1819, till as late at least as the year 1822 or 1823.

During this period of indulgence, or a considerable part of it, the principal debtors appear to have been solvent; to have maintained their credit, and to have made partial payments to the district attorney of the United States, to the amount of $3,754 80. But when efforts were shortly afterwards made to coerce, by process of law, the payment of the balance, they proved insolvent. And so the business remained, without any pursuit after the petitioner, until some time in the year 1834, when John McKinnie Esq., the brother of the petitioner's former partner and co-security, made an arrangement with the Secretary of the Treasury, by which he undertook the collection of said judgments for a compensation of 25 per cent. upon the amount that should be collected.

Having thus engaged in the business, he caused executions of *ca. sa.* to be issued on said judgments, (five in number,) and in virtue thereof, the petitioner was suddenly, and to his great surprise, arrested, in July, 1835, in the State of New York, (where he had gone upon a temporary visit,) and at a great distance from his residence. Upon that arrest, he was held in custody by the marshal of the district, until he effected his liberation by paying his fees, to the amount of $728 49, and executing his promissory note, with several sureties, dated the 24th day of July, 1835, and payable twelve months after date, at Augusta, in the State of Georgia, to William W. Mann, (who appears to have been acting as agent of the Government,) for $32,796 30, that being the sum claimed and demanded as remaining due on said judgments and executions. Upon this note, an endorsement was made at the time, reciting its consideration, and providing, in substance, that his claim to relief in the premises should not be thereby prejudiced, but that the note should be subject to whatever relief he might obtain from the Government at any time before it became due.

The object of his petition, now under consideration, is to obtain that relief.

Upon the whole case, and without further detailing its circumstances, the committee are fully satisfied that the arrangements made with, and the indulgences granted to the principal debtors, White & Co., were

such as, according to equity and to sound and familiar principles of our courts of justice, discharged the petitioner from his responsibilty as a surety, and that he is lawfully entitled to an exoneration from the judgments in question, and the promissory note given in satisfaction thereof.

The claim which Mr. John McKinnie has acquired upon these judgments, by his contract and his agency, has been strongly urged in opposition to the relief sought by the petitioner. The arguments used to sustain, that claim would deserve great consideration, and might perhaps be decisive, if the relief sought by the petitioner was solicited as mere gratuity from the liberality of the Government, but they must be totally unavailing against a *title* to relief founded in principles of justice and law. Such, in the opinion of the committee, is the title of the petitioner. It existed before Mr McKinnie's interposition in the matter; and we cannot deny justice to one man, in order to make good another's speculation.

The committee therefore report a bill for the relief of the petitioner.